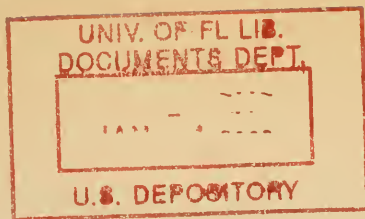


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**THE AMERICAN COMMISSIONER
MIXED CLAIMS COMMISSION
UNITED STATES AND GERMANY**

DECISION NO. 28

IN THE MATTER OF

FIXING REASONABLE FEES FOR ATTORNEYS OR
AGENTS UNDER THE AUTHORITY OF SECTION 9 OF
THE "SETTLEMENT OF WAR CLAIMS ACT OF 1928"

DOCKET NO. 4065

*Nora Connelly McCabe, Andrew Connelly, and Francis A. Connelly,
Claimants*

Walradt & Blaney, Attorneys

CHANDLER P. ANDERSON,
American Commissioner



FIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

Established in pursuance of the Agreement between the
United States and Germany of August 10, 1922

CHANDLER P. ANDERSON

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(II)

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The above named claimants have duly filed with the American Commissioner written requests that he fix a reasonable fee to be paid by them to their attorneys, Walradt & Blaney, of New York City, N. Y., as compensation for whatever services have been rendered by them on behalf of and with the authority of the said claimants, such services being of the character described in the provisions of Section 9 of the "Settlement of War Claims Act of 1928."

The claimants have objected to the amount of the fee asked by the attorneys on the ground that it is excessive, and the attorneys have been duly notified of the filing by the claimants of their requests that a reasonable fee be fixed. The attorneys have filed with the American Commissioner an affidavit and a letter giving the information which they desire to have considered by the Commissioner as showing the reasonableness of the fee asked, which information has been

brought to the attention of the claimants, whose mother has filed on their behalf an affidavit and a letter in reply, copies of which have been transmitted to the attorneys.

This claim was for damages resulting from the death of Owen Connelly, a British subject who was a fireman or trimmer on board the *Lusitania* and was drowned when she was sunk in May, 1915, by a German submarine. The claim as presented was on behalf of seven surviving sons and daughters of the deceased, all of whom were American citizens by birth, and the youngest three of whom were minors and wholly dependent upon their father for support.

In this case an award was rendered by this Commission on March 5, 1925, on behalf of the three minor children, as follows: \$1,000 to Nora Connelly, subsequently Mrs. Nora Connelly McCabe and now of full legal age; \$1,000 to Andrew Connelly, now of full legal age; and \$1,500 to Francis A. Connelly, whose mother, Mrs. Delia Connelly, is now his legal guardian, with interest on each of the above amounts at the rate of five per cent per annum from November 1, 1923, to the date of payment.

The attorneys allege in their affidavit, which was signed and sworn to by Mr. Charles P. Blaney, that "no date and terms of authorization for services and copy thereof, or of service agreement and copy thereof in writing can be given," but they ask that twenty-five per cent of the amount of the moneys actually paid to the claimants be allowed as a reasonable fee for services, in addition to the expenses incurred by them which they claim amount to \$42.67, divided as follows: \$36.44 on account jointly of the claim of the three claimants receiving awards, and \$6.23 on account of the claimant Francis Connelly individually.

It appears from the records of this Commission and from the information filed by the claimants' mother on behalf of the claimants and by these attorneys that she at first placed this claim in the hands of a Mr. John O. Delamater, her employer and a lawyer who had office space in the office of these attorneys; that thereafter between December 30, 1918, and July 22, 1919, Mr. Delamater wrote four letters to the State Department inquiring about the presentation of a claim on behalf of the widow, who like her husband was a British subject, but no claim was formally filed by him on behalf of her or on behalf of these claimants; that during the year 1922 Mr. Delam-

ater died; that Mr. Delamater, who had retired from active practice some time before his death, turned all of his business over to these attorneys; that sometime prior to October 24, 1923, Mrs. Connelly called upon Mr. Blaney and employed his firm to prosecute and collect this claim for her and her children and, according to the claimant, "in view of the fact that my three children, Andrew P. Connelly; Nora Connelly McCabe and Francis A. Connelly were minors, it was agreed that I should act for them in filing the claim."

Because of the fact that both the widow and the deceased were British subjects at the time of his death, Mr. Blaney alleges that "the claim, at the time it was brought to deponent, appeared to be almost hopeless, and deponent so reminded said Delia Connelly at said time. He, however, then told her that in view of the fact that the children were born in the United States and were American citizens, it might be possible to recover * * * if the matter were taken up with the Mixed Claims Commission." He further alleges that he "knew at the time Mrs. Delia Connelly came to him to consult with him with reference to this case, that she was probably in no financial condition to pay deponent a retainer, and that claims for people in the circumstances in which Mrs. Connelly and her family appeared to be, must from force of circumstances, be taken on a contingent basis. Nothing, therefore, was said to Mrs. Connelly at the time she, individually and as agent for her family, conferred with deponent as to what the charge for services would be, and it was not until about the time when the award was actually paid that any serious consideration of the matter was entered into between deponent and client"; and that "whatever is received by deponent's firm for services must be shared on account of Mr. Delamater's services hereinbefore set forth and his joint contingent interest herein with the Executor of Mr. Delamater's estate, whose attorney has left the matter of said estate's interest herein entirely in deponent's hands for adjustment with the claimants."

It appears from the situation thus disclosed that in fixing the fee to be paid to these attorneys it is necessary to take into consideration not only the services rendered by these attorneys but also the services rendered by their predecessor, Mr. Delamater, in so far as they were rendered for the benefit of the claimants, on whose behalf an award has been made by this Commission, and it further appears

that the fee in this case is to be fixed on the basis of a contingent fee, payable only if and when an award was made and paid on behalf of these claimants.

Deponent states in his affidavit, after setting out the names and ages of the deceased's children, that "the total number of claimants, therefore, at the commencement of said proceedings, represented by deponent's firm, were these seven children, Delia Connelly individually and the Estate of Owen Connelly, for which deponent was prepared to have an administrator appointed, if same were necessary."

Any services rendered by the attorneys on behalf of the widow or the estate of the deceased were a pure waste of time, because neither the widow nor the deceased were American citizens at the time of his death, and the State Department had distinctly stated in its correspondence with Mr. Delamater that claims on their behalf would not be espoused by this Government because they were not claims of American nationality. Inasmuch as no award was recovered on behalf of those claimants no charge can now be made by the attorneys for such services on account of the contingent character of their service agreement. Nevertheless, for reasons which will be explained below, the notice given by Mr. Delamater to the State Department of the circumstances under which the present claim arose enured to the benefit of the claimants on whose behalf the award was made, and the giving of that notice, therefore, was a service for the benefit of those claimants, and can be taken into consideration in fixing the attorneys' fee in this proceeding.

On October 22, 1923, the attorneys wrote to the Agent of the United States before this Commission, asking for information as to the presentation of this claim, but again described it as a claim on behalf of the widow of the deceased. The Agency promptly rejected the claim on the ground of her lack of American nationality, and also called the attorneys' attention to the fact that the time fixed for filing claims under the Agreement between the United States and Germany establishing this Commission had long since expired. The objection to the nationality of the claim was overcome by substituting the children as claimants instead of the widow, pursuant to the view adopted by the American Agent "that a claim for his death might be appropriately filed with the Commission on

behalf of such of the decedent's children who are mentioned in the sworn petition of Mrs. Connelly * * * as may have been American citizens at the time the claim arose and are American citizens at the present time." The difficulty about the delay in filing the claim was also overcome by the American Agent without the assistance or intervention of the attorneys solely on the ground that "the claim was recorded in the Department of State prior to the expiration of the time limit within which claims against Germany might be filed." The German Agent accordingly consented to the filing of this claim and its presentation to this Commission on behalf of the children of the deceased, and the attorneys were so notified by a letter from the Agency of February 9, 1924, and the claim was thereupon filed and listed as a claim on behalf of the deceased's children.

The original petition was filed by the attorneys on November 27, 1923, presenting the claim of the widow for compensation on account of her husband's death, and, although it mentioned the children as interested in the claim, it furnished no information as to their dependency upon their father for support, which, under the theory adopted by the Agency, was the basis upon which they were required to present their claim. It accordingly became necessary for the attorneys to supply additional information in support of this new claim, and a letter of instructions was addressed to them by the American Agent on June 6, 1924, calling for the immediate preparation of a statement setting forth the facts and circumstances giving rise to the claim. The instructions in this letter as to the presentation of this claim were set forth in considerable detail, as appears from the following extract from the letter:

As of possible guidance and assistance to you in this connection, there are enclosed herewith copy each of a statement of facts in a Lusitania claim already pending before the Commission, and a table of documentary proofs in support thereof, and also a skeleton statement numbered from 1 to 16, inclusive, setting forth the character of evidence that the Commission requires in all "loss of life" claims. Careful study of these enclosures and by reference to your office file in this case will no doubt enable you to prepare this claim in final form during the next two weeks, so that upon receipt of the papers hereinabove referred to, this matter can be immediately presented to the Commission for its consideration.

You will note from the enclosures that it is necessary to establish the American citizenship of the decedent at the time of his death. If the decedent was not an American citizen, you should, at any rate, fully establish the fact that

the claimants were, at the time of the Lusitania disaster and are now citizens of the United States. The dependency, if any, of claimants upon decedent must also be established. All contributions that the decedent may have frequently or infrequently made to the claimants should be set forth and proved, as well as the love and affection existing between the claimants and the decedent, and the mental anguish and nervous shock that must necessarily have been sustained by the claimants on account of decedent's untimely death.

Presence of decedent on board the Steamship Lusitania should be proved, and can best be done by requesting the Cunard Steamship Company to forward to this office an affidavit, in duplicate, to that effect.

The loss of personal property and effects carried by decedent should be itemized and proved by the affidavit of one or two persons who are competent to testify as to the various articles and their value.

Furthermore, decedent's health and physical condition at the time of his death should be proved and his age, as well as the ages of the claimants should be made a matter of record. The proper proof necessary to substantiate all these facts as alleged should consist of either birth certificates or naturalization certificates, as the case may require, and the affidavits of the claimants and any disinterested parties who are competent to testify upon any question involved in this claim.

This claim, however, cannot wait upon all the evidence if it is not at once forthcoming, and you are therefore urged to prepare your statement of facts as hereinbefore set forth, making all the material allegations, supported by as much of the evidence that is presently available. The additional information or data that you will, of course, have to furnish at a later date, will be promptly placed before the Commission by way of supplement or amendment to the record, as the case may require, as soon as it is received by this office.

No acknowledgment by the attorneys of the receipt of this letter having been received by the Agency, a telegram was sent to them on June 20th, asking immediate attention to the claim, and on the same day the attorneys wrote to the Agency asking for further instructions as to the preparation of the claim. This letter shows a regrettable lack of initiative on the part of the attorneys and an apparent inability to proceed with the preparation and presentation of the claim without detailed instructions and suggestions from the Agency. They ask whether the new petition should be signed by one of the children instead of by the widow, and how the facts in support of the claim should be verified, and whether the birth certificates of the children should be under seal even when issued by the proper official authorities, and whether a statement which they had drafted as to the earning capacity and life expectation of the deceased was sufficient, or, "is there anything else which we should add?" On

the following day the Agency sent a helpful letter in reply, giving further instructions and urging the immediate filing of the proposed statement with whatever documentary evidence was then available, and adding, "any additional information which may be necessary and which you may desire to submit will be entertained by the Agency at a later date if forthcoming within a reasonable time, and will, when received, be forthwith presented to the Commission by way of supplement or amendment to the record as the case may require."

On July 2nd the attorneys wrote again, asking for further instructions. They stated that they feared they would be unable to obtain birth certificates for two of the children, and asked "if your Commission will be willing to dispense with these two birth certificates," in view of the fact that "the dates and places of birth of these two children have been shown by affidavits of the mother, and will be further shown by the affidavit of one of the sisters." They add, "It would seem as if this should be sufficient. If it is, we can immediately complete the affidavit and forward it to you." The Agency replied on the following day, stating that the affidavit of the mother respecting the birth of the two children above mentioned "will be sufficient for present purposes," and that as soon as the evidence and statement of fact are received the case will at once be presented to the Commission for adjudication.

On July 8th the attorneys again wrote for further instructions. They stated that the statement, with exhibits attached, had been completed and was ready to be signed and verified by one of the daughters, but that the exhibits had not yet been copied, and as some of them were very long and "contain a great deal of fine printed matter" they would require some time to copy. They ask whether it would be necessary to have these exhibits copied word by word, to be attached to the copies of the statement, or "will it be sufficient if we refer to the exhibits in the copy statements as Exhibits A, B, C, etc. attached to the original." They added, "As soon as we hear from you, we will forward the original to Mrs. O'Brien to have her execute it."

With the assistance of the Agency all of these difficulties and problems were at last straightened out, and on July 21, 1924, the attorneys filed the new statement, verified by one of the children,

supplementing the widow's statement of November 24, 1923, together with all the exhibits they had been able to procure, and they again asked for further instructions if the Agency should require any further information.

It appears from the record that the Agency did desire additional information, and another letter of instructions was written to the attorneys on October 6, 1924, asking for an affidavit from the deceased's brother showing the deceased's earning capacity and also for further information as to the dependency of the claimants upon the deceased, and also as to the deceased's regular and incidental contributions to the support of his family, all of which, as had already been pointed out, was absolutely essential to establish the claim on the new basis on which it was being presented. On October 27th the attorneys filed with the Agency two affidavits, one by the deceased's brother and one by the widow, covering the points above mentioned.

On February 14, 1925, the Agency again had occasion to write to the attorneys, pointing out that they had omitted to furnish proof of the American nationality of the husband of Mrs. O'Brien, one of the daughters of the deceased on whose behalf the claim was made, and who had verified the petition. It was explained that notwithstanding the American nationality of Mrs. O'Brien by birth, she might have lost that nationality through marriage if her husband was a foreigner. Similar information was requested with respect to the husbands of the other married daughters.

Some of the information asked for by the Agency was furnished by the attorneys in their letter of March 3, 1925, and two days later the Commission's award on behalf of the three minor children was entered as above stated.

The attorneys failed to furnish acceptable proof of the nationality of one of the married daughters, Annie Isabella Monahan, as appears from the following extract from the Commission's final decision.

A third daughter, Annie I. Monahan, has since married but the date of her marriage and the nationality of her husband are not disclosed by the record, and it is impossible from the record to determine whether her claim for damages is one which falls within the terms of the Treaty of Berlin.

Turning now to the question of the value of the services rendered by these attorneys, a reasonable fee for which is to be fixed in these proceedings, several preliminary considerations suggest themselves.

As above stated, in view of the contingent fee basis on which these attorneys were employed, they are not entitled to compensation for services rendered in the prosecution of the claims of those claimants on whose behalf no award was made, and only the services rendered by them on behalf of the three claimants participating in the award can be considered in fixing the fee to be paid by them to these attorneys.

Attention has also been called to the statement in the affidavit filed on the part of these attorneys that in presenting these claims they represented nine claimants in all. The records of the Commission show that all of these claims were dealt with as a group by the attorneys at the outset and practically throughout their presentation, and also were so discussed in the correspondence between the attorneys and the Agency. It follows, therefore, that only approximately one-third of the total amount of the work done by these attorneys was done for the benefit of the three claimants receiving awards.

It also appears from the correspondence between the attorneys and the American Agency, some of which is quoted above, that in this case, as in the case dealt with in Decision No. 12, in a similar proceeding, the American Agency did practically everything that was done in the presentation of the claim except procuring the evidence, and even as to that the Agency was obliged to instruct the attorneys about the character of evidence necessary and how it should be presented. The attorneys seemed to be unable or unwilling to take any responsibility in the prosecution of this claim, or any steps in its preparation without detailed instructions from the American Agent.

No brief on the facts or on any question of law was filed by the attorneys, although a very important and somewhat difficult question of law was raised in this case, through the contention of the German Agent that these claims were not within the jurisdiction of this Commission because the decedent was not an American national at the time of his death. This question also arose in several other cases, and was discussed while this case was pending, and it was finally settled favorably to the American claimants, who had suffered damages through the death of an alien, but this settlement was adopted, without the participation or assistance of these attorneys, by the Commission's Administrative Decision No. VI, rendered on January 30, 1925, about a month before the award was made in this case.

The actual services rendered by these attorneys seem to have consisted in procuring proof of the father's death and the American nationality of several of the claimants, and preparing a few brief affidavits showing the dependence of several of the claimants upon the deceased, and his earning capacity and actual and probable contributions to their support.

The documents submitted by these attorneys in response to the request of the American Agency as above mentioned, and subsequently used in support of the claims in which awards were made, consisted of four typewritten affidavits, aggregating nine pages in length, which were evidently prepared in the office of these attorneys and applied equally to both groups of claimants; three printed or photostatic copies of the birth certificates of the three minor children and of the husband of Nora Connelly McCabe, and a printed copy of their marriage certificate.

Other documents filed by these attorneys, but not used in support of the claims in which awards were made, consisted of one typewritten affidavit, one page in length, which was evidently prepared in the office of these attorneys; two printed or photostatic copies of birth certificates of the husbands of two of the deceased's daughters; and two printed copies of the certificates of their marriage; a photostatic copy of the marriage license of the deceased and his wife; and a printed copy of the Declaration of Intention of the deceased to become an American citizen, which was of no importance in this case.

With reference to the above documents, the claimants' mother, Mrs. Delia Connelly, in her affidavit, alleges that all of the above printed or photostatic documents were obtained by her or members of her family at the request of these attorneys and that all fees required by the issuing authorities were paid by her or members of her family. She further alleges that she assisted in obtaining some at least of the "other memoranda" filed by these attorneys.

It is admitted in a letter filed by the attorneys in reply to the widow's affidavit that she "probably did personally procure or deliver to us one or two of these certificates at our direction and request" just as practically all of the evidence was procured through the attorneys at the direction and request of the American Agent. The record affirmatively supports the widow's contention as to the

three birth certificates which were procured from the Office of the Clerk of the City of Holyoke, certifying the birth of the three children, Owen, Mary and Annie Isabella, which certificates are in the form of post cards addressed to Mrs. D. Connelly, the widow.

A special service was rendered on behalf of the younger son, Francis A. Connelly, who at the time the award was made was still a minor, and these attorneys procured the appointment of his mother as guardian during his minority. It is appropriate, therefore, that this service should be taken into consideration in fixing the fee to be paid out of his award. In that connection, however, it is also to be noted that although the award on his behalf is larger than the other two awards the additional amount thus awarded to him does not represent any additional or greater services rendered by the attorneys in his case. The reason why his share was \$500 more than the share of the other two claimants was because he was shown to be an invalid with a serious permanent disability, which made his dependence upon his father greater than the dependence of the others, who would have ceased to be dependents on their father in any event when they came of age. This seemed to the Commission to justify the allotment to the invalid son of a larger share than to the others of the total estimated amount of damages, the principal part of which represented the probable contributions of the father for the period of his life expectancy, capitalized at its present value at the time of his death, in accordance with standard life insurance tables. A larger award to him in these circumstances does not justify charging him a larger fee than is fixed for the other claimants for the same services. On the contrary, to reduce the amount to be received by him by increasing the attorneys' fee in his case would defeat the purpose of the Commission in giving him a larger award than given to the other claimants.

Mr. Delamater's services apparently consisted solely in giving notice to the State Department of the circumstances under which these claims arose, which notice, as above stated, notwithstanding his subsequent failure to file these claims with this Commission, saved them from exclusion by default from the jurisdiction of this Commission when they were afterwards presented by the new attorneys, although it must also be noted that the later extension of the time for filing claims to July 1st of last year, by agreement between

the two Governments, would have brought these claims before this Commission as belated claims, and considerably diminishes the value of the original notice to the State Department.

Now, therefore, in the circumstances above set forth, and considering the character and extent and value of the services rendered by these attorneys, and that the payment of their compensation was contingent upon securing and collecting an award, and in view of the considerations stated in the general Jurisdictional and Administrative Decision rendered by the American Commissioner under date of September 28, 1928, and after careful examination and full consideration of the information furnished in this proceeding by the attorneys and the claimants and by the records of this Commission pertinent to the questions involved, and after due deliberation thereon.

The American Commissioner decides and fixes as the reasonable fees to be paid to their attorneys, Arthur E. Walradt and Charles P. Blaney, by each of the claimants Nora Connelly McCabe and Andrew Connelly the sum of one hundred and seventy-five dollars (\$175), and by the claimant Francis A. Connelly the sum of two hundred dollars (\$200), amounting in all to five hundred and fifty dollars (\$550), in addition to whatever necessary disbursements were expended by these attorneys on behalf of these claimants, the said fees to be paid by the claimants and received by the attorneys as full compensation for all services rendered in the prosecution and collection of their claims, as defined in Section 9 of the "Settlement of War Claims Act of 1928."

Done at Washington, D. C., this 20th day of February, 1929.

CHANDLER P. ANDERSON,

American Commissioner,

Mixed Claims Commission,

United States and Germany.



UNIVERSITY OF FLORIDA



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